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January 10, 2011

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

By Electronic Filing

**RE: STB Finance Docket No. 35407
GNP RLY, INC. – ACQUISITION AND OPERATION EXEMPTION
– REDMOND SPUR AND WOODINVILLE SUBDIVISION**

**STB Docket No. AB-6 (SUB. NO. 463X)
BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION –
IN KING COUNTY, WA**

**STB Docket No. AB-6 (SUB. NO. 465X)
BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION –
IN KING COUNTY, WA**

Dear Ms. Brown:

Petitioner GNP Rly, Inc. (“GNP”) hereby submits for filing the accompanying Reply to King County’s Response to GNP’s Motion for Protective Order filed December 15, 2010, together with GNP’s supporting Exhibits and Certificate of Service.

Please call the undersigned with any questions.

We thank the Board for its time and consideration.

Respectfully submitted,
Law Offices of John D. Heffner, PLLC

By: James H. M. Savage
Of Counsel

Attorneys for GNP Rly. Inc.

Enc.

cc: All parties (w/enc.)

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**STB FINANCE DOCKET NO. 35407
GNP RLY INC.
-- ACQUISITION AND OPERATION EXEMPTION --
REDMOND SPUR AND WOODINVILLE SUBDIVISION**

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**STB DOCKET NO. AB-6 (SUB NO. 465X)
BNSF RAILWAY COMPANY
-ABANDONMENT EXEMPTION-
IN KING COUNTY, WA**

**GNP RLY INC.'s REPLY TO KING COUNTY'S RESPONSE TO MOTION
FOR PROTECTIVE ORDER**

Submitted By:
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James H. M. Savage, Esq.
Of Counsel
(202) 296-3335
Counsel for GNP Rly Inc.

Dated: January 10, 2011

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**STB FINANCE DOCKET NO. 35407
GNP RLY INC.
-- ACQUISITION AND OPERATION EXEMPTION --
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IN KING COUNTY, WA**

**STB DOCKET NO. AB-6 (SUB NO. 465X)
BNSF RAILWAY COMPANY
-ABANDONMENT EXEMPTION-
IN KING COUNTY, WA**

**REPLY OF GNP TO KING COUNTY'S RESPONSE TO MOTION
FOR PROTECTIVE ORDER**

On January 3, 2011 King County ("County") filed a "Reply" to the Motion for Protective Order filed in these proceedings December 15, 2010 by GNP Rly Inc. ("GNP") pursuant to 49 CFR 1114.21(a). Although King County designated its filing a "Reply", GNP avers that where a "Reply" to a Motion seeks other relief (here the entry of an alternative Protective Order), it is actually a "cross-motion" to which the original movant should have the right to Reply under 49 C.F.R. 1104.13 (a). In the alternative, if the Board were to find that King County's filing were a merely a Reply to GNP's Motion, than in that event, GNP would

respectfully request the Board's permission to file this limited reply to the County's reply pursuant to 49 C.F.R. 1100.3 to afford GNP an opportunity to bring to the Board's attention the injustice which would arise were the County's Protective Order entered in the form proposed.

The Board will recall that submitted under seal with GNP's Motion were complete and unredacted copies of the following documents:

HIGHLY CONFIDENTIAL MATERIALS

GNP Reply Exhibit H – Investor - GNP Memorandum of Understanding (MOU), dated December 14, 2010 and supporting materials, if any.

CONFIDENTIAL MATERIALS

GNP Reply to Comments, pp. 40-41, rail cost estimates;

GNP Reply Exhibit K – Verified Statement of Rob Finley, dated December 13, 2010, and supporting materials;

GNP Reply Exhibit N – Railworks estimate, dated August 26, 2010; and

GNP Reply Exhibit O – Harmer Steel Products estimate, dated August 3, 2010.

In its response, King County avers that GNP's proposed protective order is overly restrictive inasmuch as none of these parties are freight rail competitors of GNP. King County's response makes sense insofar as the confidential materials, consisting primarily of rail cost estimates, are concerned and, accordingly, GNP

has no objection to the County's request for access to these documents under the terms and conditions of the protective order and the undertaking required thereunder.

However, GNP, to protect its investors must respectfully oppose disclosure of the Highly Confidential Memorandum of Understanding ("MOU") between GNP and its outside investors (Exhibit H). This document contains sensitive, highly confidential commercial information the public disclosure of which would gravely harm the signatories, in that it would disclose their confidential business relationship to parties against whom they have or may potentially have adverse business interests. Certainly, GNP investors are adverse to the County and any other party subscribing to the County's position in this proceeding that Sound Transit, and not GNP, is the sole entity with the legal right to operate passenger rail service in the Puget Sound region. *See*, Exhibit 1, December 1, 2010 Deposition of King County witness Pam Bissonnette at 32:15-19 .

GNP further avers that the nature of the highly confidential Investor-GNP MOU is such that no Public version of the document redacting all confidential proprietary information is feasible. Accordingly, no Public version of this highly confidential document has been provided.

The County's response also indirectly highlights a scrivener's error in GNP's proposed Protective Order at Paragraph 1(b) thereof. GNP's definition of

“Confidential Information” unintentionally cites the RRIF Loan Application, rather than the **Investor-GNP Memorandum of Understanding**. A revised proposed Protective Order, with the above error corrected, is annexed hereto as Exhibit 2. GNP accordingly amends its Motion to reference the corrected proposed Protective Order.

GNP further amends its Motion to request a waiver of the requirement to file a redacted version of the Highly Confidential document. In the first place, filing a redacted version of the MOU would serve no purpose since the investors seek not only to protect certain highly confidential information but also seek to preserve their identity from disclosure at this time. *See*, STB Finance Docket No. 35425 Tennessee Southern Railroad Company, Patriot Rail, LLC, Patriot Rail Holdings LLC, and Patriot Rail Corp.—Continuance In Control Exemption—Columbia & Cowlitz Railway, LLC, DeQueen and Eastern Railroad, LLC, Golden Triangle Railroad, LLC, Mississippi & Skuna Valley Railroad, LLC, Patriot Woods Railroad, LLC, and Texas, Oklahoma & Eastern Railroad, LLC (STB served Nov. 15, 2010).

Secondly, to the limited extent that GNP’s financial fitness is at issue in this proceeding, outside counsel and their outside consultants, if any, are well able to assess the financial data disclosed therein without directly involving their client’s personnel.

Thirdly, the County's counter-proposed form of Order is entirely off-topic with regard to the nature and purpose of the Highly Confidential material. No trackage rights, shipper-specific rate or cost data is disclosed in GNP's Highly Confidential Exhibit, and the entry of an Order predicated upon these irrelevant factors would not only be absurd, but also would expose GNP's investors to forfeiture of their confidentiality, contrary to their reasonable expectation of privacy in their confidential undertaking, thus rendering local disclosure particularly inappropriate and undesirable.

GNP reiterates its belief that its proposed Protective Order is singularly appropriate as to the Highly Confidential material, and should be entered substantially as originally submitted, the County having failed in its Reply to have adequately expressed the relevant factors applicable to GNP's need for confidentiality.

Respectfully submitted,
JOHN D. HEFFNER, PLLC
1750 K Street, N.W. - Suite 200
Washington, D.C. 20006

By: _____
James H. M. Savage
Of counsel
(202) 296-3335
Counsel for GNP Rly Inc.

Dated: January 10, 2011

EXHIBIT 1

BISSONNETTE DEPOSITION

EXHIBIT 2

REVISED PROPOSED PROTECTIVE ORDER

1. For purposes of this Protective Order:

(a) “Confidential Documents” means documents and other tangible materials containing or reflecting Confidential Information.

(b) “Confidential Information” means the **INVESTOR-GNP MEMORANDUM OF UNDERSTANDING (“MOU”)** furnished by GNP as Exhibit H in connection with the above-captioned matters and any other confidential or proprietary business or personal information.

(c) “Designated Material” means any documents designated or stamped as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” in accordance with paragraph 2 or 3 of this Protective Order and any Confidential Information contained in such materials.

(d) “Proceedings” means those before the Surface Transportation Board (Board) concerning the transactions in STB Finance Docket No. 35407 and in STB Docket Nos. AB-6 (Sub Nos. 463X and 465X) (hereinafter, “related proceedings”) before the Board, and any judicial review proceedings arising from STB Finance Docket No. 35407 or from any related proceedings before the Board.

2. If any party to these Proceedings determines that any part of a document it submits, discovery request it propounds, discovery response it produces, transcript of a deposition or hearing in which it participates, or pleading or other paper to be submitted, filed, or served in these Proceedings contains Confidential Information or consists of Confidential Documents, then that party may designate and stamp such Confidential Information and Confidential Documents as “CONFIDENTIAL.” Any information or documents designated or stamped as “CONFIDENTIAL” shall be handled as provided for hereinafter.

3. If any party to these Proceedings determines that any part of a document it submits, discovery request it propounds, or a discovery response it produces, or a transcript of a deposition or hearing in which it participates, or pleading or other paper to be submitted, filed, or served in these Proceedings contains commercial agreements of any kind; shipper-specific rate or cost data; division of rates,

trackage rights compensation levels, other compensation between carriers; or other competitively sensitive or proprietary information, then that party may designate and stamp such Confidential Information as "HIGHLY CONFIDENTIAL." Any information or documents so designated or stamped shall be handled as provided hereinafter.

4. Information and documents designated or stamped as "CONFIDENTIAL" may not be disclosed in any way, directly or indirectly, or to any person or entity except to an employee, counsel, consultant, or agent of a party to these Proceedings, or an employee of such counsel, consultant, or agent, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit A to this Protective Order.

5. Information and documents designated or stamped as "HIGHLY CONFIDENTIAL" may not be disclosed in any way, directly or indirectly, to any employee of a party to these Proceedings, or to any other person or entity except to an outside counsel or outside consultant to a party to these Proceedings, or to an employee of such outside counsel or outside consultant, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit B to this Protective Order.

6. All parties must file simultaneously a public version of any Highly Confidential or Confidential submission filed with the Board whether the submission is designated a Highly Confidential Version or Confidential Version. When filing a Highly Confidential Version, the filing party does not need to file a Confidential Version with the Board, but must make available (simultaneously with the party's submission to the Board of its Highly Confidential Version) a Confidential Version reviewable by any other party's in-house counsel. The Confidential Version may be served on other parties in electronic format only. In lieu of preparing a Confidential Version, the filing party may (simultaneously with the party's submission to the Board of its Highly Confidential Version) make available to outside counsel for any other party a list of all "highly confidential" information that must be redacted from its Highly Confidential Version prior to review by in-house personnel, and outside counsel for any other party must then redact that material from the Highly Confidential Version before permitting any clients to review the submission.

7. Any party to these Proceedings may challenge the designation by any other party of information or documents as "CONFIDENTIAL" or as "HIGHLY CONFIDENTIAL" by filing a motion with the Board or with an administrative law judge or other officer to whom authority has been lawfully delegated by the Board to adjudicate such challenges.

8. Designated Material may not be used for any purposes, including without limitation any business, commercial or competitive purposes, other than the preparation and presentation of evidence and argument in STB Finance Docket No. 35407, any related proceedings before the Board, and/or any judicial review proceedings in connection with STB Finance Docket No. 35407 and/or with any related proceedings.

9. Any party who receives Designated Material in discovery shall destroy such materials and any notes or documents reflecting such materials (other than file copies of pleadings or other documents filed with the Board and retained by outside counsel for a party to these Proceedings) at the earlier of: (1) such time as the party receiving the materials withdraws from these Proceedings, or (2) the completion of these Proceedings, including any petitions for reconsideration, appeals or remands.

10. No party may include Designated Material in any pleading, brief, discovery request, or response, or other document submitted to the Board, unless the pleading or other document is submitted under seal, in a package clearly marked on the outside as "Confidential Materials Subject to Protective Order." See 49 CFR 1104.14. All pleadings and other documents so submitted shall be kept confidential by the Board and shall not be placed in the public docket in these Proceedings except by order of the Board or of an administrative law judge or other officer in the exercise of authority lawfully delegated by the Board.

11. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to any forum other than this Board in these Proceedings unless: (1) the pleading or other document is submitted under seal in accordance with a protective order that requires the pleading or other document to be kept confidential by that tribunal and not be placed in the public docket in the proceeding, or (2) the pleading or other document is submitted in a sealed package clearly marked, "Confidential Materials Subject to Request for Protective Order," and is accompanied by a motion to that tribunal requesting issuance of a protective order that would require the pleading or other document be kept confidential and not be placed in the public docket in the

proceeding, and requesting that if the motion for protective order is not issued by that tribunal, the pleading or other document be returned to the filing party.

12. No party may present or otherwise use any Designated Material at a Board hearing in these Proceedings, unless that party has previously submitted, under seal, all proposed exhibits and other documents containing or reflecting such Designated Material to the Board, to an administrative law judge or to another officer to whom relevant authority has been lawfully delegated by the Board, and has accompanied such submission with a written request that the Board, administrative law judge or other officer: (a) restrict attendance at the hearing during any discussion of such Designated Material, and (b) restrict access to any portion of the record or briefs reflecting discussion of such Designated Material in accordance with this Protective Order.

13. If any party intends to use any Designated Material in the course of any deposition in these Proceedings, that party shall so advise counsel for the party producing the Designated Material, counsel for the deponent, and all other counsel attending the deposition. Attendance at any portion of the deposition at which any Designated Material is used or discussed shall be restricted to persons who may review that material under the terms of this Protective Order. All portions of deposition transcripts or exhibits that consist of, refer to, or otherwise disclose Designated Material shall be filed under seal and be otherwise handled as provided in paragraph 10 of this Protective Order.

14. To the extent that materials reflecting Confidential Information are produced by a party in these Proceedings, and are held and/or used by the receiving person in compliance with paragraphs 1, 2, or 3 above, such production, disclosure, holding, and use of the materials and of the data that the materials contain are deemed essential for the disposition of this and any related proceedings and will not be deemed a violation of 49 U.S.C. 11904 or of any other relevant provision of the ICC Termination Act of 1995.

15. All parties must comply with all of the provisions of this Protective Order unless the Board or an administrative law judge or other officer exercising authority lawfully delegated by the Board determines that good cause has been shown warranting suspension of any of the provisions herein.

16. Nothing in this Protective Order restricts the right of any party to disclose voluntarily any Confidential Information originated by that party, or to disclose voluntarily any Confidential Documents originated by that party, if such

Confidential Information or Confidential Documents do not contain or reflect any Confidential Information originated by any other party.

EXHIBIT A

UNDERTAKING-CONFIDENTIAL MATERIAL

I, _____, have read the Protective Order served on _____, governing the production and use of Confidential Information and Confidential Documents in STB Finance Docket No. 35407 and the related proceedings, understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Finance Docket No. 35407, any related proceedings before the Surface Transportation Board (Board), and/or any judicial review proceedings in connection with STB Finance Docket No. 35407 and/or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Undertakings in the form hereof, and that at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting materials designated or stamped as "CONFIDENTIAL," other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that GNP, or other parties producing Confidential Information or Confidential Documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Signed: _____

Affiliation: _____ Dated: _____

Exhibit B

UNDERTAKING—HIGHLY CONFIDENTIAL MATERIAL

I, _____, am outside [counsel] [consultant] for _____, for whom I am acting in this proceeding. I have read the Protective Order served on _____, governing the production and use of Highly Confidential Information and Highly Confidential Documents in STB Finance Docket No. 35407 and the related proceedings, understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any Highly Confidential Information or Highly Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Finance Docket No. 35407, any related proceedings before the Surface Transportation Board (Board), or any judicial review proceedings in connection with STB Finance Docket No. 35407 and/or with any related proceedings. I further agree not to disclose any Highly Confidential Information, Highly Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Highly Confidential Undertakings in the form hereof.

I also understand and agree, as a condition precedent to my receiving, reviewing, or using copies of any information or documents designated or stamped as "HIGHLY CONFIDENTIAL," that I will take all necessary steps to ensure that said information or documents be kept on a confidential basis by any outside counsel or outside consultants working with me; that under no circumstances will I permit access to said materials or information by employees of my client or its subsidiaries, affiliates, or owners; and that at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting information or documents designated or stamped as "HIGHLY CONFIDENTIAL," other than file copies kept by outside counsel of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that GNP or other parties producing Highly Confidential Information or Highly Confidential Documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Signed: _____

OUTSIDE [COUNSEL] [CONSULTANT]

Dated: _____

CERTIFICATE OF SERVICE

I, James H. M. Savage, hereby certify that a copy of the foregoing Reply of GNP to the response filed January 3, 2011 by King County to GNP's Motion for Protective Order was served by first-class United States mail or electronic mail upon the following:

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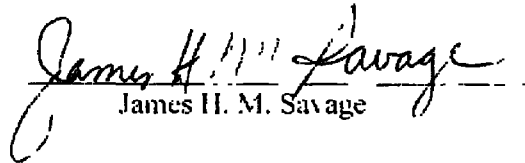
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James H. M. Savage

Dated: January 10, 2011